

**REMARKS****A. The Rejection under 35 U.S.C. § 103(a) against Claims 49, 52, 56, 63, and 64 Should Be Withdrawn**

In the Office Action, claims 49, 52, 56, 63, and 64 are rejected under 35 U.S.C. §103(a), allegedly as being unpatentable over Moser *et al.* (US 7,727,987, "Moser"). Applicants respectively traverse.

Applicants respectfully submit that Moser is disqualified as prior art to the instant application under 35 U.S.C. § 103(c)(2). Moser may qualify as prior art only under 35 U.S.C. § 102(e), since the priority date of the instant application (Nov. 17, 2004) is earlier than the publication date of the corresponding application of Moser (Feb. 16, 2006). Moser is assigned to Merck Eprova AG *via* an assignment recorded at Reel/Frame No. 016541/0902. The instantly claimed invention was made by or on behalf of parties to a joint research agreement between BioMarin Pharmaceutical Inc. and Merck Eprova AG, which was in effect on or before the date the instantly claimed invention was made. Furthermore, the instantly claimed invention was made as a result of activities undertaken within the scope of the joint research agreement. The specification of the instant application has been amended in accordance with 35 U.S.C. § 103(c)(2)(c) to disclose the names of the parties to the joint research agreement. Therefore, Applicants respectfully request that this rejection be withdrawn.

**B. The Rejection under 35 U.S.C. § 103(a) against Claims 49, 51-53, 55, 56, 58-60, and 62-64 Should Be Withdrawn**

In the Office Action, claims 49, 51-53, 55, 56, 58-60, and 62-64 are rejected under 35 U.S.C. §103(a), allegedly as being unpatentable over Moser in view of Dietrich (US 2004/0058896, "Dietrich"). Applicants respectively traverse.

As discussed herein above, Moser is disqualified as prior art to the instant application under 35 U.S.C. § 103(c)(2). Dietrich alone does not render the present claims obvious. Thus, the instant claims are not obvious. Therefore, Applicants respectfully request that this rejection be withdrawn.

**C. The Rejection under 35 U.S.C. § 103(a) against Claims 49-64 Should Be Withdrawn**

In the Office Action, claims 49-64 are rejected under 35 U.S.C. §103(a), allegedly as being unpatentable over Moser in view of Dietrich (US 2004/0058896, "Dietrich") and Toyosaki (*J. Agric. Food. Chem.* **1989**, 37, 286-289, ("Toyosaki")). Applicants respectively traverse.

As discussed herein above, Moser is disqualified as prior art to the instant application under 35 U.S.C. § 103(c)(2). Dietrich and Toyosaki, alone or in combination, do not render the present claims obvious. The instant claims are thus not obvious. Therefore, Applicants respectfully request that this rejection be withdrawn.

**SUMMARY**

Should the Examiner believe that prosecution of this application might be expedited by further discussion of any remaining issue, the Examiner is cordially invited to contact the undersigned representative of Applicants, Dale L. Rieger, Ph.D., by phone at (858) 314-1200 or by email at [drieger@jonesday.com](mailto:drieger@jonesday.com).

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 50-3013 and please credit any excess fees to such deposit account.

Respectfully submitted,

Dated: May 12, 2011

By: \_\_\_\_\_



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